

Fair Political Practices Commission

To: Chairman Randolph; Commissioners Blair, Downey, Huguenin and Remy

From: Luisa Menchaca, General Counsel
C. Scott Tocher, Senior Commission Counsel

Subject: Pending Litigation

Date: April 28, 2005

1. *California ProLife Council, Inc. v. Karen Getman et al.*

This action challenged the Act's reporting requirements for express ballot measure advocacy. In October 2000 the Federal District Court for the Eastern District of California dismissed certain counts for standing and/or failure to state a claim, and later granted the FPPC's motion for summary judgment, eliminating further counts in a judgment entered on January 22, 2002. Plaintiff appealed that judgment to the Ninth Circuit Court of Appeal. The Ninth Circuit rejected plaintiff's legal claims, affirming that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy upon demonstrating a sufficient state interest in so doing. The Ninth Circuit remanded the matter back to the district court to determine whether California can establish a state interest sufficient to support its committee disclosure rules, and whether the state's disclosure rules are properly tailored to that interest. On December 17, the court heard cross-motions for summary judgment on these questions, and on February 22, 2005 the court issued its decision granting defendants' motion and denying plaintiff's. Plaintiff has again appealed this decision to the Ninth Circuit. The parties anticipate that the appeal will be heard and decided late this year.

2. *FPPC v. Agua Caliente Band of Cahuilla Indians, et al.*

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contributed more than \$7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions, and likewise failed to disclose more than \$1 million in late contributions made between July 1, 1998 and June 30, 2002. The FPPC later amended the complaint to add a cause of action alleging that the tribe failed to disclose a \$125,000 contribution to the Proposition 51 campaign on the November 5, 2002 ballot. Defendants responded to the lawsuit by filing a motion to quash service, alleging that they could not be civilly prosecuted for violating the Political Reform Act because of tribal sovereign immunity. On February 27, 2003 the Honorable Loren McMaster of the Sacramento County Superior Court ruled in the FPPC's favor. On April 7, defendants filed a petition for writ of mandate in the Third District Court of Appeal, challenging the decision of the trial court. The petition was summarily

denied on April 24, 2003, whereupon defendants filed a petition for review in the California Supreme Court. On July 23, 2003, the Supreme Court granted review and transferred the case back to the Court of Appeal, where oral argument was heard before Justices Blease, Sims, and Davis. On March 3, 2004, the Court of Appeal issued its opinion, affirming the Superior Court's decision after concluding that "the constitutional right of the State to preserve its republican form of government trumps the common law doctrine of tribal immunity." On April 6, 2004, Blue Lake Rancheria and Mainstay Business Solutions, a Government Sponsored Enterprise of the Blue Lake Rancheria, filed with the California Supreme Court a request for depublication of the Court of Appeal's decision. Associate Justice Sims of the Third District Court of Appeal, author of the opinion, filed a letter with the Supreme Court on April 19, 2004, requesting that the depublication request be denied on the ground that it had not been properly served on the Third District Court of Appeal, depriving him of an opportunity to respond to the depublication request. In the interim, on April 13, 2004, defendants filed a Petition for Review in the California Supreme Court. On June 23, 2004, the Supreme Court granted the Petition for Review. On September 23, 2004, the defendants filed an opening brief with the Supreme Court. On December 30, 2004, the FPPC filed its opposition brief. On April 1, 2005, defendants filed a closing brief. The parties are now waiting for the Supreme Court to set a date for oral argument.

3. FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria

In this action the FPPC alleges that the Santa Rosa Indian Community of the Santa Rosa Rancheria failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving more than \$500,000 in political contributions to statewide candidates and propositions, and that defendants failed to disclose more than \$350,000 in late contributions made in October 1998. The complaint was originally filed on July 31, 2002, and was amended on October 7, 2002. On January 17, 2003, defendants filed a motion to quash service, based on its claim of tribal sovereign immunity. On May 13, 2003, the Honorable Joe S. Gray of the Sacramento County Superior Court entered an order in favor of defendants. On July 14, 2003, the FPPC appealed this decision to the Third District Court of Appeal, where the matter was scheduled for oral argument. The Attorney General filed an amicus brief in support of the FPPC's position. On July 16, 2004, the Commission's appellate counsel was apprised that the tribe had secured new counsel to pursue this appeal and would be seeking a continuance of the oral argument date. On July 29, 2004, the Santa Rosa Indian Community of the Santa Rosa Rancheria filed a substitution of attorneys replacing Monteau & Peebles with Lang, Richert & Patch of Fresno, as appellate counsel. Concurrent with the filing of the substitution of attorneys, a request for continuance of the date for oral argument was made. The court granted a continuance to October 19, 2004, at 9:30 a.m. The court heard oral argument on October 19, 2004, and on October 27, 2004, issued a decision in favor of the Commission overturning the trial court's granting of defendant's motion to quash. The tribe filed a petition for review with California Supreme Court which was granted on January 12, 2005. However, any action on the case has been deferred pending the outcome of the Agua Caliente case.

4. FPPC v. American Civil Rights Coalition, et al.

In a lawsuit filed in the Sacramento County Superior Court on Sept. 3, 2003, the FPPC alleges that the American Civil Rights Coalition (“ACRC”) and its CEO Ward Connerly failed to file campaign statements reporting the source of almost \$2 million contributed to promote the passage of Proposition 54 on the Oct. 7 ballot. An application for intervention in the lawsuit was filed on September 16 by a group known as the “DOE Class” of past and potential contributors to ACRC, seeking among other things to postpone a hearing on the FPPC’s motion for preliminary injunction to an unspecified later date. The court went forward with the injunction hearing on September 19, 2004, denying the FPPC’s motion on the ground that the factual record was not sufficiently developed to warrant a preemptive remedy. Defendants next brought a special motion to strike the complaint under Code of Civil Procedure § 425.16. On December 1, 2003, the Superior Court denied this special motion. On December 3, 2003 defendants appealed to the Third District Court of Appeal. On August 16, 2004, the court of appeal issued its decision affirming the trial court’s denial of defendant’s special motion. The case is now scheduled for a trial setting conference in the Superior Court on May 2, 2005.

5. *California Republican Party, et al. v FPPC et al.*

On October 12, 2004 the California Republican Party, the California Democratic Party, and the Orange County Republican Party filed a Complaint in the Federal District Court seeking injunctive and declaratory relief from two provisions of the Act, sections 84503 and 84506, which require a committee paying for ballot measure advertisements to identify their two highest contributors of \$50,000 or more. On October 20, 2004 plaintiffs amended their Complaint, and noticed a motion for Temporary Restraining Order to be heard on October 26, 2004. The FPPC filed its Opposition to this motion on October 22. The Attorney General’s office represented the Commission at the hearing before the Honorable Frank C. Damrell, Jr. The following day, the Court issued a preliminary injunction enjoining the Commission from enforcing the provisions of the Act above against plaintiffs. The Commission filed its Answer on December 3, 2004. A settlement conference took place on April 11, 2005. A second conference is scheduled before Magistrate Judge Peter Nowinski on May 2, 2005.

6. *Citizens to Save California, et al. v. FPPC*

On February 8, 2005 Citizens to Save California and Assembly Member Keith Richman filed a Complaint for injunctive and declaratory relief in Sacramento Superior Court alleging that Citizens, a newly-formed advocacy group closely aligned with the Governor’s legislative agenda, wished to solicit and receive unlimited contributions in anticipation of a campaign for several ballot measures that may be decided in a special election that may be held in November. The suit challenges the Commission’s adoption of regulation 18530.9 in June, 2005, which imposed on candidate-controlled ballot measure committees the contribution limit applicable to the controlling candidate. Plaintiffs claim that this regulation violates their First Amendment rights of speech and association, and that the Commission lacked statutory authority to adopt the regulation in the first place. Shortly after the Complaint was filed, an additional group of plaintiffs led by Governor Arnold Schwarzenegger intervened in the action, prompting the California Public Interest Research Group to attempt to intervene as a defendant. The court

denied the intervention petition and later granted plaintiffs' motion for a preliminary injunction, barring FPPC enforcement of regulation 18530.9 pending final disposition of the lawsuit. The court issued its order on April 18, 2005, and the Commission filed a Notice of Appeal upon receiving the order the following day. In its Notice of Appeal, the Commission stated its contention that the superior court's injunction is stayed upon the filing of the notice. On April 25, the superior court heard arguments in the plaintiffs' ex parte application challenging the automatic stay. The court heard argument from both sides and took the matter under submission. The court had not issued its ruling by the time of publication of this update.

7. *FPPC v. Democratic National Committee, Non-federal-Corporate et al.*

In a lawsuit filed in the Sacramento Superior Court, the FPPC alleges that a California campaign committee sponsored by the national Democratic party committee, and the treasurers of that committee, failed to file a second pre-election campaign statement disclosing \$1.2 million in contributions to the California Democratic Party. The complaint was filed on February 25, 2005. Defendants filed an answer to the complaint on April 1, 2005. The answer denied the allegation that defendants violated the Political Reform Act, and asserted as a defense that defendants relied on informal telephone assistance from the FPPC. The answer also asserted as a defense that the FPPC did not follow all of its procedures for bringing a civil action. In addition to filing an answer to the complaint, defendants filed a cross-complaint against the FPPC seeking declaratory and injunctive relief. The cross-complaint alleges that Government Code section 83115.5 requires the FPPC to hold a probable cause conference prior to instituting a civil enforcement action against a prospective defendant. The cross-complaint also alleges that FPPC regulation 18361.8, which defendants interpret as eliminating the procedures for bringing a civil action, violates a respondent's right to due process. A response to the cross-complaint is due May 4, 2005.